UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,548	01/28/2002	Paul Wegner	9280-20001	3755

27331 7590 12/13/2004

BENASUTTI, P.A.
17294 BERMUDA VILLAGE DRIVE
BOCA RATON, FL 33487

EXAMINER	
HOWARD, SHARON LEE	
ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/058,548	WEGNER, PAUL	
	Examiner	Art Unit	
	Sharon L. Howard	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 8/3/04.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1,7-9,11-23,30,31 and 33-44 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,7-9,11-23,30,31,33-44 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

James M. Spear
JAMES M. SPEAR
PRIMARY EXAMINER
AU 1615

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The examiner acknowledges receipt of the amendment, remarks and declaration under section 1.132 filed on 8/3/04. Applicant has amended the claims to cancel references to hydrogen peroxide and percarbonate. Claims 1,11-13,23,30,31 are currently amended. Claims 2-6,10,24-29,32 have been cancelled. Claims 1,7-9,11-23,30,31 are now pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,7-9,18,21-23,30,31 remain rejected under 35 U.S.C. 102(b) as being anticipated by Hamaguchi et al. (JP 2000-005775 or application number 10-180899). Hamaguchi teaches a mixture of hydrogen peroxide or sodium carbonate and a nitrate ion to remove odor (See the abstract and machine translation provided). The nitrate can be a sodium, calcium potassium or ammonium nitrate (See Claim 4). Therefore, Hamaguchi anticipates Claims 1, 7-9,18, 21-23,31.

Claims 1,7-9,18, 21-23,30,31 remain rejected under 35 U.S.C. 102(b) as being anticipated by Miyamoto et al. (JP 11-104660 or application number 09-290324). Miyamoto teaches a mixture of hydrogen peroxide and magnesium nitrate to remove odor (See the abstract and machine translation provided). Therefore, Miyamoto anticipates Claims 1,7-9,18, 21-23,31.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11, 12, 15, 33, 34, 37, 39, 41 and 42 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hamaguchi in combination with Frismark et al (US 6703010). The teachings of Hamaguchi are discussed above. Hamaguchi does not expressly teach that the oxide is zinc oxide.

Frismark teaches that zinc oxide is a known odor controlling agent to be used to treat sewage water and waste (Col.7, lines 32-46; Col.24, lines 6-30, 50-56).

Neither reference teaches the exact concentrations but the ranges do overlap. With respect to the claimed concentrations, absent a clear showing of criticality, the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to substitute one oxidizing agent for another when both are known to treat odors in sewage.

One of ordinary skill in the art would have been motivated to do this to provide the most effective odor controlling composition for the odor to be eliminated and one would be motivated to substitute one agent for another due to the expense of each agent.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art the time the invention was made.

Claims 13, 14, 16, 17, 35, 36 and 38 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hamaguchi in combination with Stone (US 5948269). The teachings of Hamaguchi are discussed above. Hamaguchi does not expressly teach that the oxide is iron oxide.

Stone teaches that iron oxide is a known odor controlling agent to be used to treat sewage water and waste (Claims 1-3).

Neither references teaches the exact concentrations but the ranges do overlap. With respect to the claimed concentrations, absent a clear showing of criticality, the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to substitute one oxidizing agent for another when both are known to treat odors in sewage.

One of ordinary skill in the art would have been motivated to do this to provide the most effective odor controlling composition for the odor to be eliminated and one would be motivated to substitute one agent for another due to the expense of each agent.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 19,20, 22, 40, 43 and 44 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hamaguchi et al. The teachings of Hamaguchi are discussed above. Hamaguchi does not expressly teach the exact concentration ranges for the components.

It is the position of the Examiner that absent a clear showing of criticality, the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to vary the concentration of the components for eliminating odor.

One of ordinary skill in the art would have been motivated to do this to prepare compositions for various odor controlling applications, i.e., sewage treatment facilities as well as for the home.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

Applicant's arguments filed 8/3/04 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to recognize that the use of peroxide is not effective for long term odor control. The cited references to Hamaguchi et al and Miyamoto et al both require hydrogen peroxide. The present invention does not require it. The cited references to Sine ('766), Frismark et al ('010) and Stone ('269) lack any reference to the use of "nitrate" for odor control or for limiting the production of foul odors. Thus there is nothing in these references to show or suggest that they should be combined for substantially preventing the production of new odors in matter for extended periods of time.

In response to applicant's arguments, when a reference discloses the same formulation, it is not necessary that the prior art know each and every result that is obtainable, since the prior art is directed to treating odors, any additional properties would be inherent given the scope of the applicant's claim. In essence, the prior art teaches that it can eliminate odor. Thus, it woud have been obvious to substitute one oxidizing agent for another. The rejection is therefore maintained for reasons set forth above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (571) 272-0596. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharon Howard
December 8, 2004

James M. Spear
JAMES M. SPEAR
PRIMARY EXAMINER